

AMENDED IN ASSEMBLY APRIL 26, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1399

**Introduced by Committee on Labor and Employment (Swanson
(Chair), Alejo, Allen, Furutani, and Yamada)**

February 28, 2011

An act to amend Section 1198.5 of the Labor Code, relating to employment records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1399, as amended, Committee on Labor and Employment. Employment records: right to inspect.

Under existing law, an employee has the right to inspect the personnel records that his or her employer maintains relating to the employee's performance or to any grievance concerning the employee.

This bill would require an employer to maintain personnel records for a specified period of time and to provide a current or former employee, or his or her representative, an opportunity to inspect and make copies of those records within a specified period of time. In addition, in the event an employer violates these provisions, the bill would permit a current or former employee or the Labor Commissioner to recover a penalty of \$750 from the employer, and would further permit a current or former employee to obtain injunctive relief and attorney's fees.

Under existing law, an employer shall be guilty of a misdemeanor and is punishable by a fine, as specified, or imprisonment, as specified, if he or she violates or refuses or neglects to comply with certain provisions, including the above provisions.

This bill would notwithstanding the above-described misdemeanor and fine and imprisonment provisions and would, instead, provide that a violation of the above provisions regarding personnel records constitutes an infraction. Although this bill would change a violation of the above-described provisions regarding personnel records from a misdemeanor to an infraction, by expanding the scope of what would constitute an infraction, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1198.5 of the Labor Code is amended to
2 read:
3 1198.5. (a) Every current and former employee, and his or her
4 representative, has the right to inspect and receive copies of the
5 personnel records that the employer maintains relating to the
6 employee's performance or to any grievance concerning the
7 employee.
8 (b) The employer shall make the contents of those personnel
9 records available *for inspection* to the current or former employee,
10 or his or her representative, at reasonable intervals and at
11 reasonable times, but not later than 21 calendar days from the date
12 of a written or oral request, *as specified*, for these records. Upon
13 a *written* request from a current or former employee, or his or her
14 representative, the employer shall also provide copies of the
15 personnel records, at a charge not to exceed the actual cost of
16 reproduction, *not later than 21 calendar days from the date of the*
17 *request*. Except as provided in paragraph~~(4)~~ (2) of subdivision
18 (c), the employer is not required to make those personnel records
19 *or copies thereof* available at a time when the employee is actually
20 required to render service to the employer, if the requester is the
21 employee.

1 (c) The employer shall do the following:

2 (1) ~~Keep~~ *With regard to all employees, maintain a copy of each*
3 ~~current employee's personnel records at the place where the~~
4 ~~employee reports to work.~~

5 (2) ~~Maintain a copy of each employee's personnel records for~~
6 ~~a period of not less than four years after termination of~~
7 ~~employment. for a period of not less than three years after~~
8 ~~termination of employment.~~

9 (3) ~~Make~~

10 (2) *With regard to current employees, make a current employee's*
11 *personnel records available for inspection, or provide copies*
12 *thereof, as requested by the employee or his or her representative,*
13 *at the place where the employee reports to work within a reasonable*
14 *period of time following a request by an employee, or his or her*
15 *representative, but not later than 21 calendar days from the date*
16 *of a request.*

17 (4) ~~Permit a current employee, or his or her representative, to~~
18 ~~inspect the personnel records at the location where the employer~~
19 ~~stores the personnel records, with no loss of compensation to the~~
20 ~~employee.~~

21 (5) ~~Make a former employee's personnel records available for~~
22 ~~inspection at the location where the employer stores the records~~
23 ~~or, at the request of the former employee, or his or her~~
24 ~~representative, provide a copy of the personnel records to the~~
25 ~~former employee, or his or her representative, not later than 21~~
26 ~~calendar days from the date of the request., or at another location~~
27 ~~agreeable to the employer and the requester. If the employee is~~
28 ~~required to inspect or receive copies at a location other than the~~
29 ~~place where he or she reports to work, no loss of compensation to~~
30 ~~the employee is permitted.~~

31 (3) *With regard to former employees, make a former employee's*
32 *personnel records available for inspection, or provide copies*
33 *thereof, as requested by the employee or his or her representative,*
34 *at the location where the employer stores the records. A former*
35 *employee may receive copies by mail if he or she reimburses the*
36 *employer for actual postal expenses.*

37 (d) *The employer may take reasonable steps to verify the identity*
38 *of a current or former employee or his or her authorized*
39 *representative. For purposes of this section, "representative"*

1 *means a person authorized in writing by the employee to inspect,*
2 *or receive a copy of, his or her personnel records.*

3 *(e) The employer may designate the person to whom a request*
4 *is made.*

5 *(f) Prior to making records specified in subdivision (a) available*
6 *for inspection or providing copies of those records, the employer*
7 *may redact the name of any nonsupervisory employee contained*
8 *therein.*

9 ~~(d)~~

10 (g) The requirements of this section do not apply to:

11 (1) Records relating to the investigation of a possible criminal
12 offense.

13 (2) Letters of reference.

14 (3) Ratings, reports, or records that were:

15 (A) Obtained prior to the employee's employment.

16 (B) Prepared by identifiable examination committee members.

17 (C) Obtained in connection with a promotional examination.

18 (4) Employees who are subject to the Public Safety Officers
19 Procedural Bill of Rights (Chapter 9.7 (commencing with Section
20 3300) of Division 4 of Title 1 of the Government Code).

21 (5) Employees of agencies subject to the Information Practices
22 Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4
23 of Division 3 of the Civil Code).

24 ~~(e) The Labor Commissioner may adopt regulations that~~
25 ~~determine the reasonable times and reasonable intervals for the~~
26 ~~inspection of records maintained by an employer that is not a public~~
27 ~~agency.~~

28 ~~(f)~~

29 (h) If a public agency has established an independent employee
30 relations board or commission, an employee shall first seek relief
31 regarding any matter or dispute relating to this section from that
32 board or commission before pursuing any available judicial
33 remedy.

34 ~~(g)~~

35 (i) In enacting this section, it is the intent of the Legislature to
36 establish minimum standards for the inspection *and the receipt of*
37 *copies* of personnel records by employees. Nothing in this section
38 shall be construed to prevent the establishment of additional rules
39 for the inspection *and the receipt of copies* of personnel records

1 that are established as the result of agreements between an
2 employer and a recognized employee organization.

3 ~~(h)~~

4 (j) If an employer fails to permit a current or former employee,
5 or his or her representative, to inspect or copy personnel records
6 within the times specified in this section, the current or former
7 employee or the Labor Commissioner may recover a penalty of
8 seven hundred fifty dollars (\$750) from the employer.

9 ~~(i)~~

10 (k) A current or former employee may also bring an action for
11 injunctive relief to obtain compliance with this section, and may
12 recover costs and reasonable attorney's fees in such an action.

13 (l) *Notwithstanding Section 1199, a violation of this section is*
14 *an infraction. Impossibility of performance, not caused by or*
15 *resulting from a violation of law, may be asserted as an affirmative*
16 *defense by an employer in any action alleging a violation of this*
17 *section.*

18 SEC. 2. *No reimbursement is required by this act pursuant to*
19 *Section 6 of Article XIII B of the California Constitution because*
20 *the only costs that may be incurred by a local agency or school*
21 *district will be incurred because this act creates a new crime or*
22 *infraction, eliminates a crime or infraction, or changes the penalty*
23 *for a crime or infraction, within the meaning of Section 17556 of*
24 *the Government Code, or changes the definition of a crime within*
25 *the meaning of Section 6 of Article XIII B of the California*
26 *Constitution.*